



# BANKRUPTCY AND DIVORCE

## What You Need To Know

Family law and bankruptcy law frequently overlap and the effect can be quite complicated. Always talk to your bankruptcy trustee about your specific situation.

### How Does Bankruptcy Affect Alimony & Maintenance?

**Bankruptcy does not discharge outstanding alimony or child support payments.**

The spouse owed back support payments can make a claim in the bankruptcy and receive their share of any 'dividend' paid from the estate. Any alimony or support arrears for the 12 months prior to the date of bankruptcy are considered a preferred claim and are paid out of the proceeds of the bankrupt estate before any other unsecured claims. The balance left unpaid is still owed by the paying spouse.

Unpaid debts due to equalization payments under the terms of a divorce or separation agreement are treated like any other unsecured debt and are eliminated by filing bankruptcy.

**Support and alimony payments are deductible for purposes of calculating surplus income.**

This potentially lowers your net income, reducing any surplus income payment you may be required to make in a bankruptcy.

### How Does Bankruptcy Affect Assets In My Current Divorce?

If you filed bankruptcy first, your assets transfer to your bankruptcy estate and are no longer available for distribution in a divorce. Alternately, if assets are transferred to an ex-spouse as part of a Family Court Order or legal separation agreement before you file for bankruptcy (assuming not done fraudulently) then these assets are no longer available for your creditors in the bankruptcy.

### What Happens To Joint Debts We Both Owe?

**A joint debt cannot be eliminated by a divorce or separation agreement.**

Your lender must agree to remove one spouse from any debt they co-signed or guaranteed. This includes joint credit cards.

**A divorced or separated couple can still file a joint bankruptcy or joint consumer proposal.**

This is not uncommon as a method of dealing with joint debts owed by a couple who can no longer repay these debts due to their divorce and a change in their financial circumstances.